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BY ECF & ELECTRONIC MAIL

Honorable Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

Re: Castillo Marcelino et al. v. 374 Food, Inc., et al.
16 Civ. 6287 (KPF)

Your Honor:

I am an attorney with the office of Michael Faillace & Associates, attorneys for Plaintiff in the above-referenced matter. In anticipation of the initial pretrial conference currently scheduled for January 4, 2017 at 3:30 p.m., the parties jointly submit this status report. A proposed Case Management Plan is also annexed hereto.

I. Brief Statement of the Nature of the Action

Plaintiff contends that he was employed by Defendants to work at a bagel shop operating under the name Tribeca Bagels located at 374 Canal Street, New York NY 10013. Plaintiff alleges Defendants maintained a policy and practice of requiring the Plaintiffs (and upon information and belief, other employees) to work in excess of forty hours per week without paying them the minimum wage and overtime compensation required by federal and state laws. Specifically, Plaintiff alleges he was paid a flat daily salary as opposed to the overtime wages required by law.

Plaintiff therefore brings this action to recover overtime wages, spread of hours pay, liquidated damages, interest, attorneys fees, and costs pursuant to The Fair Labor Standards Act of 1938, 29 U.S.C. 201 *et seq.* (FLSA , the New York Minimum Wage Act, N.Y. Lab. Law 650 *et seq.*, and the spread of hours wage order of the New York Commission of Labor codified at N.Y. COMP. CODES R. & REGS. tit. 12, 146-1.6 (herein the Spread of Hours Wage Order).

II. Jurisdictional Statement

Plaintiffs allege this Court has subject matter jurisdiction pursuant to 29 U.S.C. § 216(b) (FLSA), 28 U.S.C. § 1337 (interstate commerce) and 28 U.S.C. § 1331 (federal question). Supplemental jurisdiction over Plaintiff's state law claims is conferred by 28 U.S.C. § 1337(a). Venue is proper in this District under 28 U.S.C. § 391(b) and (c) because all or a substantial part of the events or omissions giving rise to the claims occurred in this district, Defendants operate

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their business in this district, and Plaintiff was employed by Defendants in this district. Defendants do not dispute jurisdiction.

III. Statement of Existing Deadlines

Defendants anticipate responding to the Complaint on January 2, 2016.

IV. Outstanding Motions

There are no outstanding motions at this time.

V. Status of Discovery

Discovery in this matter is in its initial stages; the parties anticipate engaging in paper and deposition discovery practice concerning plaintiffs' wages and hours.

VI. Status of Settlement Discussions

The parties have not yet engaged in meaningful settlement discussions, however they anticipate being able to do so following the exchange of paper discovery. At that time the parties may seek a settlement conference before a Magistrate Judge for the purpose of resolving their dispute.

The parties thank the Court for its time and attention to this matter.

Respectfully Submitted,

/s/
Shawn Clark
Michael Faillace & Associates, P.C.
Attorneys for Plaintiff

Enclosure

cc: (By ECF)
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